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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,880	04/09/2004	Adrianus Cornelis Kruik	88265-7114	9267

29157 7590 02/07/2007

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EXAMINER	
TRAN LIEN, THUY	
ART UNIT	PAPER NUMBER
1761	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/07/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/820,880	KRUIK ET AL.	
	Examiner	Art Unit	
	Lien T. Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 November 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 6-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 6-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claims 1, 6-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Canadian patent 950750.

Patent no. 950750 discloses pre-baked pastry crusts. The crust comprises about 60-90% dehydrated pre-baked pastry crumbs, 7-25% fat and 0-20% binder material. The binder material may be any sugar, hydrolyzed cereal solids, starches, cellulose, gums or combinations of any of these. The fat may be melted fat or powdered fat. The fat suitable for use can be any of the commercially available fats or hydrogenated vegetable oils.

The patent does not specifically disclose biscuit, the properties as recited in claim 1, the amount of fat claimed, the property of the fat, the inclusion of other ingredients in the mixture of baked pastry and fat, the amount of overrun as in claims 9-10, the making of the confection as in claims 11, 17, the inclusion of other material in the ice confection as in claims 12-14, the form of the confection as in claim 15 and the mixing temperature as in claim 16

The patent discloses using baked crumbs which is a baked product. Biscuit is a baked product; thus, the two particles are the same because the claims have not set forth any difference between the biscuit particles and the baked particles in the patent. Furthermore, it would also have been obvious to use other baked particles depending on the taste and flavor wanted. When baked particles are mixed with the fat, it is obvious the mixture will have the same property as in claim 1 because the same materials are used. It is also obvious the fat will have the solid fat content as claimed because the patent disclose the same fat as claimed. It would have been obvious to

vary the fat content when desiring to alter the taste, texture, consistency of the mixture. It would also have been obvious to add other food ingredients to enhance the taste of the product; the selection of the type of ingredients and the amounts can vary depending on the taste and flavor desired. It would also have been obvious to combine a frozen confection with the shell disclosed in the patent because it is well known to place frozen confection in pie shell as discussed on line 4 of page 1 of the patent. The type of confection selected depends on the taste and flavor wanted and would have been an obvious matter of choice. It would have been obvious to use any known method to make the frozen confection; both molding and extrusion are well known in the art. It would also have been obvious to have any varying percent of aeration depending on the texture desired for the product. It would have been obvious to include other inclusion to enhance the taste of the ice confection; this is notoriously well known in the art. It would have been obvious to form the shell in any form depending on the look wanted. It would have been within the skill of one in the art to determine the appropriate temperature of the fat so that it can be easily mixed with the particles. This can readily be determined through routine experimentation. It would have been obvious to form the ice confection as the shell or the baked particles as the shell depending on the type of confection wanted. Frozen desserts come in many different shapes and forms; one can readily see this in a supermarket or ice cream novelty store. It would have been obvious to one skilled in the art to make the various forms claimed because they are well known in the art. It would have been within the skill of one in the art to

determine the temperature to pour the particles through routine experimentation in absence of showing of unexpected result or criticality.

In the response filed 11/20/06, applicant argues Hegadorn teaches away from the claims because Hegadorn teaches using a higher amount of pastry crumbs, a lower amount of fat and preferably a binder. This argument is not persuasive. The amount of crumbs in the Hegadorn mixture is 60-90%; this range falls within the one claimed. Thus, Hegadorn does not necessarily teach higher amount of pastry crumbs and the amounts of crumbs include those claimed. As to the binder, this component is optionally; thus, Hegadorn does disclose mixture without the binder. As to the amount of fat, the rejection takes the position that it would have been obvious to vary the fat content to alter the taste, texture, consistency and fat content of the product. Applicant does not present evidence or reasoning why this would not have been obvious to one skilled in the art. Food products having varying range of fat content are notoriously well known in the art. For example, cookies come in variety of fat content as fat free, low fat, and high fat; the same is true for many other types of food product. A few examples include ice cream, cake, cracker, pie, pastries etc... Applicant also argues Hegadorn fails to disclose or suggest the processing step of bringing an ice confectionery and the biscuit mass. Hegadorn teaches the crust mixture is used make dessert including frozen desserts etc..This clearly suggests to one skilled in the art to use the mixture with frozen confectionery to make a frozen dessert. For example, one can use the crumb mixture with ice cream to make an ice cream pie. The selection of the type of filling to be used with the crumb mixture would have been an obvious matter of choice.

Applicant's arguments filed 11/20/06 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday, Wed-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

February 5, 2007

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700